



## DECLARATION OF DONALD W. FOSTER, Ph.D

April 11, 1997

I, Donald W. Foster, declare as follows:

1. I obtained my Ph.D. in English from the University of California (Dec. 1985). I am currently employed by Vassar College full-time as a Professor of English on the Jean Webster Chair, having been hired by Vassar as an Assistant Professor in 1986. In 1990 I was promoted to Associate Professor with indeterminate tenure, and to Full Professor in 1995. My responsibilities include classroom instruction and scholarly research in the fields of English language and literature. In addition to my responsibilities within the academic community, I serve often as a private consultant in matters of textual analysis and authorial attribution. I have been retained in civil cases as a consultant and expert to examine issues of authorial attribution of written documents. These cases have included litigation involving wills and various other documents of disputed or doubtful authorship. I am perhaps best known for having correctly identified Joe Klein as the author of *Primary Colors*, "by Anonymous," in February 1996, three weeks after the novel's initial release; six months later, Klein finally acknowledged his authorship of the novel.<sup>(1)</sup>

2. My publications include articles in various fields of literary study (classical and biblical literature, early women writers, Shakespeare and Renaissance drama, literary theory), but my area of special expertise is that of linguistic and textual analysis as pertains to problems of attribution, textual indebtedness, and textual transmission. My print publications in this area of specialization include one book and many articles. In addition, I have developed and edited "Shaxicon" (a lexical database for literary studies and linguistics) and the "Vassar Electronic Text Archive," both of which resources have helped to solve problems of authorship and intertextual indebtedness.

3. I have examined in detail the following documents:

a. The Turchie Affidavit (hereafter, the "Affidavit") in support of the 3 April 1996 Search Warrant in the case of *United States v. Kaczynski*, as well as the attachments to the said Affidavit.

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b. The "T-documents," which consist of various letters and other writings ascribed to the Defendant (written in the years 1968-1995, some undated), and an untitled 1971 essay likewise ascribed to the Defendant.

c. English translations of T-documents that were written in Spanish and translated into English, as prepared by a Government translator.

d. The "U-documents," which consist of the Unabom Manuscript, entitled "Industrial Society and Its Future," and other letters purportedly by the same individual.

e. The "Notice of Motion and Motion to Suppress Evidence" (hereafter, the "Motion to Suppress"; dated 3 March 1997), as well as the appendices to the Motion to Suppress.

4. In studying these documents I have made comparative reference to various linguistic and textual databases, a cross-sample extending to many millions of words and thousands of writers. I have also compared various T- and U-documents with the identified or identifiable sources that contribute textual material to those documents.

5. In December 1996 I received a telephone call from Lauren Weil, who identified herself as an assistant counsel for Ted Kaczynski's Defense. Ms. Weil explained that the Defense intended to file a Motion to Suppress, arguing that the FBI's text analysis was flawed and that it supplied insufficient grounds for the April 1996 Search Warrant. Ms. Weil asked if I would assist the Defense in critiquing the FBI's text-analysis. I needed a few days to consider the available documents before making a decision whether or not to assist the Defense in this respect. In the interim, I downloaded from the World Wide Web various texts pertaining to the Unabom case. These included the Affidavit, T-2 (the 1971 essay by Kaczynski), and U-14 (i.e., the Unabom manuscript, "Industrial Society and Its Future"). In my initial study of these documents, I found considerable internal evidence that T-2 and U- 14 were likely to have been written in whole or in part by the same person; and in my study of the Affidavit, I found that the FBI had done a remarkably careful job in setting forth evidence of common authorship for T-2 and U- 14. When Ms. Weil called me again a few days later, I declined her invitation to assist the Defense. She asked me for the names of other scholars who might be willing and able to help with the Motion to Suppress. Having surveyed the evidence for common authorship of U-14 and T-2 (and of various other T- and U-documents as represented in the Affidavit), I told Ms. Weil it was unlikely she would find an attributional scholar willing to assail Fitzgerald's text-analysis, except perhaps in a few minor particulars.

6. In March 1997, an attorney for the United States invited me to examine the representations made in the Affidavit concerning the comparative text-analysis of Special Agent Fitzgerald; and to examine the representations made in the Motion to Suppress alleging flaws in that analysis. I agreed to do so. I have now examined the pertinent documents in considerable

detail. My opinions may be summarized as follows:

7. It seems reasonable, fair, and accurate for the Affidavit to represent the U-14 and the T-documents as "very similar," in thought, language, and manner (Affidavit, paragraph 110); and indeed it seems reasonable to conclude that these texts are likely to have been written by the same individual. The evidence of common authorship is set forth in the Affidavit judiciously and with admirable objectivity and restraint; errors of fact or interpretation are relatively few and insignificant. The evidence of authorial identity rests not in any one instance of similar thought or language, but in a collocation of shared linguistic habits that extends to spelling, rare diction, grammatical accident, syntactical habits, shared source material, and shared ideology, together with internal biographical evidence that likewise points to authorial identity of the T- and U-documents.

8. More specifically, I find it reasonable, fair, and accurate, to conclude that T-2 (the 1971 essay) and U-14 are significantly "similar" as indicated in paragraph 112 of the Affidavit and as illustrated in the passages cited on pp. 65-66 (again with the understanding that it is the collocation of similarities, and no particular example, that points toward the likelihood of common authorship for T-2 and U-14).

9. I find it likewise reasonable to conclude that the passages cited in paragraph 199 of the Affidavit are significantly "similar." Moreover, "you can't have your cake and eat it too" is indeed the common American usage as indicated in paragraph 200.

10. It is alleged in the Motion to Suppress that "Through a series of false statements, material omissions, and irrelevant information, the Government improperly attempted to suggest that there was evidence that Theodore Kaczynski was the author of the Unabom manuscript" (Argument, p. iii, 52). I find this representation to be unreasonable, unfair, and inaccurate. In my opinion, the analysis by Special Agent Fitzgerald is unassailable in all important respects; conversely, I find the comparative analysis in the Motion to Suppress to be highly unreliable, containing many false and misleading statements and material omissions (Argument, pp.52-76, 95-99, 109: "Critique of the FBI Analysis of the T-Documents and the U-Documents," pp.1-77).

11. I find that the testimony of Harry M. Ermoian substantially understates the significance of books and other documents from which the T- and U-documents draw topical, ideological, or linguistic material. Many of the writings directly mentioned or alluded to in both the T- and U-documents are widely known, as noted by Ermoian, but the collocation of shared reading material and manner of citation point likewise to authorial identity of the T- and U-documents.

12. I disagree strongly with the conclusion of Professor Robin Lakoff that the FBI's claims of "authorial identity" are "untenable and unreliable at best" (Lakoff, p. 10). Prof. Lakoff acknowledges that her examples of "errors" are "intended to be illustrative, rather than exhaustive" (Lakoff, p.3), but I find that she substantially misconstrues or misrepresents the evidence of common authorship as set forth in the Affidavit. Lakoff

extracts and decontextualizes particular linguistic similarities in the T- and U-documents, observing particular examples in the Affidavit to be commonplace, dismissing others as the result of content-linked lexical choices; but nowhere is it alleged in the Affidavit that isolated verbal parallels constitute evidence of common authorship. I find the methods and conclusions of Agent Fitzgerald to be considerably more reliable and tenable than those of Prof. Lakoff with respect to the probable authorship of the U-documents.

13. In my opinion, the Affidavit substantially understates the likelihood that the U-documents and the T-documents were written in whole or part by the same individual. The evidence of common authorship is far more extensive, detailed, and compelling than the FBI has suggested. The similarities of thought, expression, grammar, syntax, diction, and internal biographical evidence cannot be attributed to mere chance, or to common subject matter, or even to a shared ideology and set of beliefs. In my opinion, unless it can be shown that the original English writings ascribed to the Defendant were not, in fact, written by him, one must conclude that U-14. "Industrial Society and Its Future," was written by the Defendant as well.

14. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief. Executed this 11th day of April, 1997, at Poughkeepsie, New York.

DONALD W. FOSTER  
(signature)

1. D. Foster, "Primary Culprit." New York (26 Feb.1996: released 14 Feb.): 50-7.

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